REPORT ON THE

P.	S. Patent & Trademark Offi O. Box 1450 ria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN PATENT & TRADEMARK OFFICEN REGARDING A PATENT OR TRADEMARK
In Compl	liance with 35 § 290 and/or 15 U	S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. D	istrict Court Northern Distri	et of California on the following X Patents or Trademarks:
OCKET NO.	DATE FILED	U.S. DISTRICT COURT
CV 08-05542 EMC	12/10/08	Northern District of California, San Francisco Division DEFENDANT
SENDMAIL INC		TUMBLEWEED COMMUNICATIONS
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,865,671		
2 6,986,037		
3 7,146,402		
4		
5		
DATE INCLUDED	NCLUDED BY	endment
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the about the Internation of the Internation of the International Internation of the I	ve—entitled case, the following	decision has been rendered or judgement issued:
		decision has been rendered or judgement issued:

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

51. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

COUNT NINE

CONTRIBUTORY PATENT INFRINGEMENT OF THE '402 PATENT

- 52. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(c), has contributed and continues to contribute to the making, using, offering for sale or selling within the United States, products or processes that practice inventions claimed in the patent '402 patent.
- 53. On information and belief, Defendant Tumbleweed has had notice of its contributory infringement of the '402 patent at least as early as the filing of this Complaint.
- 54. Plaintiff Sendmail has been damaged by the contributory infringement of the '402 patent by Defendant Tumbleweed and will continue to be damaged by such infringement.

 Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.
- 55. On information and belief, the continued contributory infringement by Defendant Tumbleweed of the '402 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 56. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

RELIEF REQUESTED

Wherefore, Plaintiff Sendmail respectfully requests that this Court enter judgment against Defendant Tumbleweed as follows:

- A. That each of the Patents-in-Suit is valid and enforceable;
- B. That the '671 patent has been infringed by Defendant Tumbleweed;
- C, That the '037 patent has been infringed by Defendant Tumbleweed;

D. That the '402 patent has been infringed by Defendant Tumbleweed; 1 That infringement of the Patents-in-Suit has been willful; 2 E. 3 F. An injunction against further infringement of the Patents-in-Suit; 4 An award of damages adequate to compensate Plaintiff Sendmail for the patent G. infringement that has occurred, together with pre-judgment interest and costs; 5 H. An award of all other damages permitted by 35 U.S.C. § 284, including increased 6 damages up to three times the amount of compensatory damages found: 7 That this is an exceptional case and an award to Plaintiff Sendmail of its costs and I. reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285; 8 and 9 J. Such other relief as this Court deems just and proper. 10 Dated: December 10, 2008 Respectfully Schmitted. 11 Arthur S. Beeman (SBN 237996) 12 Pamela K. Fulmer (SBN 154736) JONES DAY 13 San Francisco Office 555 California Street, 26th Floor 14 San Francisco, CA 94104 Telephone: (415) 626-3939 15 Facsimile: (415) 875-5700 asbeeman@jonesday.com 16 pkfulmer@jonesday.com 17 Kwan Chan (SBN 252610) JONES DAY 18 Silicon Valley Office 1755 Embarcadero Road 19 Palo Alto, CA 94303 Telephone: (650)739-3939 20 Facsimile: (650)739-3900 kchan@jonesday.com 21 Attorneys for Plaintiff 22 SENDMAIL, INC. 23 24 25 26 27 28

DEMAND FOR JURY TRIAL

Plaintiff Sendmail hereby demands a jury trial for all issues so triable.

Dated: December 10, 2008

Respectfully Submitted,

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Attorneys for Plaintiff SENDMAIL, INC.

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1 Arthur S. Beeman (SBN 237996) DEC 10 2008 Pamela K. Fulmer (SBN 154736) 2 JONES DAY RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA San Francisco Office 555 California Street, 26th Floor 3 San Francisco, CA 94104 4 Telephone: (415) 626-3939 Facsimile: (415) 875-5700 5 asbeeman@jonesday.com pkfulmer@jonesday.com 6 Kwan Chan (SBN 252610) 7 JONES DAY Silicon Valley Office 1755 Embarcadero Road 8 Palo Alto, CA 94303 (650) 739-3939 9 Telephone: Facsimile: (650) 739-3900 10 jeglore@jonesday.com kchan@jonesday.com 11 12 Attorneys for Plaintiff SENDMAIL, INC 13 14 IN THE UNITED STATES DISTRICT COURT 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA 16 ひかせる 17 SENDMAIL, INC., a Delaware Civil Action No. corporation. 18 Plaintiff 19 COMPLAINT FOR PATENT INFRINGEMENT v. 20 TUMBLEWEED COMMUNICATIONS 21 DEMAND FOR JURY TRIAL CORP., a Delaware corporation, 22 Defendant. 23 24 25 26 27

COMPLAINT FOR PATENT INFRINGEMENT

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Plaintiff Sendmail, Inc. ("Sendmail"), for its Original Complaint for Patent Infringement ("Complaint") against Defendant Tumbleweed Communications, Corp. (hereafter, "Tumbleweed"), alleges as follows:

NATURE OF THE CASE

1. This action arises under 35 U.S.C. § 271 for Tumbleweed's infringement of one or more of Sendmail's United States Patent Nos. 6,865,671, 6,986,037, and 7,146,402 (collectively, the "Patents-in-Suit").

THE PARTIES

- Plaintiff Sendmail is a Delaware corporation, with its principal place of business at 6475 Christie Avenue, Suite 350, Emeryville, California.
- 3. On information and belief, Defendant Tumbleweed is a Delaware corporation with its principal place of business at 71600 Seaport Boulevard, Redwood City, California.
- 4. On information and belief, Defendant Tumbleweed is a wholly-owned subsidiary of Axway, Inc., and Axway, Inc. is a wholly-owned subsidiary of Sopra Group.

JURISDICTION AND VENUE

- 5. This is an action for patent infringement in violation of the Patent Act of the United States, Title 35, United States Code. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
- 6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District.
- Personal jurisdiction exists over Defendant because Defendant has availed itself of the privilege of doing business in California during the time relevant to this complaint.

INTRADISTRICT ASSIGNMENT

8. Pursuant to Local Rule 3-2(c), Intellectual Property Actions are assigned on a district-wide basis.

9. Plaintiff Sendmail is the owner of all right, title, and interest in United States
Patent No. 6,865,671 entitled "Electronic Mail System with Authentication Methodology for
Supporting Relaying in a Message Transfer Agent" ("the '671 patent"). The '671 patent was duly
and properly issued by the United States Patent and Trademark Office ("PTO") on March 8,
2005. A true and correct copy of the '671 patent is attached hereto as Exhibit A.

- 10. Plaintiff Sendmail is the owner of all right, title, and interest in United States
 Patent No. 6,986,037 entitled "Electronic Mail System with Authentication/Encryption
 Methodology for Allowing Connections to/from a Message Transfer Agent" ("the '037 patent").
 The '037 patent was duly and properly issued by the PTO on January 10, 2006. A true and correct copy of the '037 patent is attached hereto as Exhibit B.
- 11. Plaintiff Sendmail is the owner of all right, title, and interest in United States
 Patent No. 7,146,402 entitled "E-mail System Providing Filtering Methodology on a Per-Domain
 Basis" ("the '402 patent"). The '402 patent was duly and properly issued by the PTO on
 December 5, 2006. A true and correct copy of the '402 patent is attached hereto as Exhibit C.

COUNT ONE

DIRECT PATENT INFRINGEMENT OF THE '671 PATENT

- 12. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe the '671 patent by making, using, offering for sale or selling within the United States, products or processes that practice inventions claimed in the '671 patent.
- 13. On information and belief, Defendant Tumbleweed has had notice of its direct infringement of the '671 patent at least as early as the filing of this Complaint.
- 14. Plaintiff Sendmail has been damaged by the direct infringement of the '671 patent by Defendant Tumbleweed and will continue to be damaged by such infringement. Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.

- 15. On information and belief, the continued direct infringement by Defendant Tumbleweed of the '671 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 16. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

COUNT TWO

INDUCING PATENT INFRINGEMENT OF THE '671 PATENT

- 17. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(b), has induced and continues to induce others to make, use, offer for sale or sell within the United States, products or processes that practice inventions claimed in the '671 patent.
- 18. On information and belief, Defendant Tumbleweed has had notice of its inducing infringement of the '671 patent at least as early as the filing of this Complaint.
- 19. Plaintiff Sendmail has been damaged by the induced infringement of the '671 patent by Defendant Tumbleweed and will continue to be damaged by such infringement.

 Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.
- 20. On information and belief, the continued induced infringement by Defendant Tumbleweed of the '671 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 21. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

COUNT THREE

CONTRIBUTORY PATENT INFRINGEMENT OF THE '671 PATENT

- 22. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(c), has contributed and continues to contribute to the making, using, offering for sale or selling within the United States, products or processes that practice inventions claimed in the '671 patent.
- 23. On information and belief, Defendant Tumbleweed has had notice of its contributory infringement of the '671 patent at least as early as the filing of this Complaint.
- 24. Plaintiff Sendmail has been damaged by the contributory infringement of the '671 patent by Defendant Tumbleweed and will continue to be damaged by such infringement.

 Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.
- 25. On information and belief, the continued contributory infringement by Defendant Tumbleweed of the '671 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 26. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

COUNT FOUR

DIRECT PATENT INFRINGEMENT OF THE '037 PATENT

- 27. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe the '037 patent by making, using, offering for sale or selling within the United States, products or processes that practice inventions claimed in the '037 patent.
- 28. On information and belief, Defendant Tumbleweed has had notice of its direct infringement of the '037 patent at least as early as the filing of this Complaint.

29. Plaintiff Sendmail has been damaged by the direct infringement of the '037 patent by Defendant Tumbleweed and will continue to be damaged by such infringement. Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.

- 30. On information and belief, the continued direct infringement by Defendant Tumbleweed of the '037 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 31. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

COUNT FIVE

INDUCING PATENT INFRINGEMENT OF THE '037 PATENT

- 32. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(b), has induced and continues to induce others to make, use, offer for sale or sell within the United States, products or processes that practice inventions claimed in the '037 patent.
- 33. On information and belief, Defendant Tumbleweed has had notice of its induced infringement of the '037 patent at least as early as the filing of this Complaint.
- 34. Plaintiff Sendmail has been damaged by the inducing infringement of the '037 patent by Defendant Tumbleweed and will continue to be damaged by such infringement.

 Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.
- 35. On information and belief, the continued induced infringement by Defendant Tumbleweed of the '037 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

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36. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

COUNT SIX

CONTRIBUTORY PATENT INFRINGEMENT OF THE '037 PATENT

- 37. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(c), has contributed and continues to contribute to the making, using, offering for sale or selling within the United States, products or processes that practice inventions claimed in the patent '037 patent.
- 38. On information and belief, Defendant Tumbleweed has had notice of its contributory infringement of the '037 patent at least as early as the filing of this Complaint.
- 39. Plaintiff Sendmail has been damaged by the contributory infringement of the '037 patent by Defendant Tumbleweed and will continue to be damaged by such infringement.

 Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.
- 40. On information and belief, the continued contributory infringement by Defendant Tumbleweed of the '037 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 41. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

COUNT SEVEN

DIRECT PATENT INFRINGEMENT OF THE '402 PATENT

42. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe the '402 patent by making, using, offering for sale or selling within the United States, products or processes that practice inventions claimed in the '402 patent.

- 43. On information and belief, Defendant Tumbleweed has had notice of its direct infringement of the '402 patent at least as early as the filing of this Complaint.
- 44. Plaintiff Sendmail has been damaged by the direct infringement of the '402 patent by Defendant Tumbleweed and will continue to be damaged by such infringement. Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.
- 45. On information and belief, the continued direct infringement by Defendant Tumbleweed of the '402 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.
- 46. Plaintiff Sendmail has suffered and continues to suffer irreparable harm, for which there is no adequate remedy at law, and will continue to do so unless Defendant Tumbleweed is enjoined therefrom by this Court.

COUNT EIGHT

INDUCING PATENT INFRINGEMENT OF THE '402 PATENT

- 47. On information and belief, Defendant Tumbleweed, in violation of 35 U.S.C. § 271(b), has induced and continues to induce others to make, use, offer for sale or sell within the United States, products or processes that practice inventions claimed in the '402 patent.
- 48. On information and belief, Defendant Tumbleweed has had notice of its inducing infringement of the '402 patent at least as early as the filing of this Complaint.
- 49. Plaintiff Sendmail has been damaged by the induced infringement of the '402 patent by Defendant Tumbleweed and will continue to be damaged by such infringement.

 Plaintiff Sendmail is entitled to recover from Defendant Tumbleweed the damages sustained by Plaintiff Sendmail as a result of Defendant Tumbleweed's wrongful acts.
- 50. On information and belief, the continued induced infringement by Defendant Tumbleweed of the '402 patent is deliberate and willful, entitling Plaintiff Sendmail to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.